

Proposal to resolve constitutional concerns; people can opt out

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WASHINGTON, DC—U.S. Congressman Peter DeFazio (D-OR) today announced his intention to introduce legislation in response to a federal court ruling against the constitutionality of the health care reform law Congress passed last year. In a letter to his colleagues, DeFazio asked them to support the Personal Responsibility in Health Care Insurance Act, which he plans to introduce in the next few weeks. The bill would allow individuals to opt out of the insurance mandate by signing an “affidavit of personal responsibility” that would waive their right to taxpayer funded medical assistance. This would help resolve the constitutional questions surrounding the individual mandate.

“Yesterday’s District Court decision to strike down the entire health care reform law was unnecessary,” wrote DeFazio. “Congress can quickly resolve the issues of constitutionality and the limits of the federal government by reforming the individual mandate with an opt-out clause that allows for full personal responsibility. I believe buying insurance should be a choice, not a matter of federal coercion. But with that choice, comes responsibility.”

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DeFazio’s legislation is a common sense fix that would resolve constitutional questions about the individual mandate. Individuals that choose to opt-out would agree that any debts incurred because of medical care are theirs and theirs alone.

It is estimated that every person who purchases health insurance pays an additional \$1400 each year for unreimbursed medical care for the uninsured and the underinsured. DeFazio's bill would ensure that the burden of unreimbursed care would not be transferred on to taxpayers or healthcare providers. Those who choose to gamble without insurance will pay for their own medical expenses.

A copy of the letter is below:

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A Fair Compromise that Resolves the Constitutional Question of the Individual Mandate

Dear Colleague:

Yesterday's Pensacola District Court decision to strike down the entire health care reform law was unnecessary. Congress can quickly resolve the issues of constitutionality and the limits of the federal government by reforming the individual mandate with an opt-out clause that allows for full personal responsibility. I believe buying insurance should be a choice, not a matter of federal coercion. But with that choice comes responsibility.

I will soon be introducing the Personal Responsibility in Health Care Insurance Act that creates an opt-out option to the individual health insurance mandate. In making that choice to opt out, Americans should accept the full costs of their own health care, and not be a burden on taxpayers, medical providers, or other Americans who have purchased insurance. In 2008, the uninsured received approximately \$45 billion worth of uncompensated care from hospitals, doctors, and other providers, after out-of-pocket payments and government and charity program contributions. Oregon families pay an extra \$1400 a year (\$1,100 nationally) on higher insurance premiums to cover those who do not have insurance. This is effectively a hidden tax on families and businesses.

Under my proposal, anyone required to purchase health insurance and who does not already qualify for an exemption (current law contains religious and low income exemptions) can opt-out of the mandate. To do so they must file an “affidavit of personal responsibility” with the state exchange. Such a filing will waive their rights to:

- 1) Enroll in a health insurance exchange;
- 2) Enroll in Medicaid if otherwise made eligible; and
- 3) Discharge health care related debt under Chapter 7 bankruptcy law.

These rights would be restored after the person purchases the minimum level of insurance for at least 5 years without subsidies or the benefits of the exchange. This will prevent adverse selection, the ability to buy insurance only when you need it.

In the Florida v. HHS ruling yesterday, Judge Vinson opened the door to this fix in Footnote 14:

*The individual mandate differs from the regulations in Wickard and Raich, for example, in that the individuals being regulated in those cases were engaged in an activity (regardless of whether it could readily be deemed interstate commerce in itself) and each had the choice to discontinue that activity and avoid penalty. See, e.g., Wickard v. Filburn, 317 U.S. 111, 130, 63 S. Ct. 82, 87 L. Ed. 122(1942) (noting Congress “gave the farmer a choice” of several options under the statute). **Here, people have no choice but to buy insurance or be penalized.** (emphasis added)*

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Secondly, Judge Vinson argues that the individual mandate cannot stretch the Commerce Clause to the point where it has no “outer limits”. Putting aside the arguments for or against this test of the Commerce Clause, adding a personally responsibility opt-out clause provides a direct link to commercial activity (i.e. the exchanges, Medicaid, and bankruptcy) and thus ensures the constitutionality of the health care reform law.

Join me in the common-sense fix that resolves not only the constitutional questions of the individual mandate, but also provides a workable remedy for those who do not want more federal intrusion into their lives. If they waive their right to the federal health care backstop, then they alone are burdened with their future healthcare costs.

Peter DeFazio

Member of Congress

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